

*United States Court of Appeals  
for the Second Circuit*



**APPELLANT'S  
REPLY BRIEF**



74-1098

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Appellee

v.

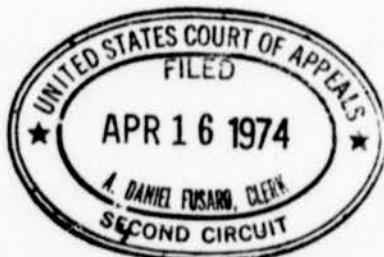
Docket No. 74-1098

THOMAS OWENS,

Defendant-Appellant

-----X

APPELLANT'S REPLY BRIEF



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To be argued by  
Osmond K. Fraenkel

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APPELLANT'S REPLY BRIEF

1. The government's brief in discussing the conspiracy issue contains many misleading statements, some in no way supported by the record. Thus, on page 3 is the statement that there was an over-all conspiracy according to which Owens was the source of the cocaine and Young of the heroin. No record reference is given and there is no testimony supporting that hypothesis. Indeed, when arrested Young had cocaine in his possession - the controversial Exhibit 23-C.  
<sup>12</sup>

On the same page is the statement that Owens was present with Young and others "when the heroin transaction took place." The reference to the minutes (Tr. 123-125) does not support the statement, since Young is not there mentioned. The reference to the videotape (Exh. 23) as interpreted by Officer Kuremoto (Tr. 399, 400), shows only that appellant

and Young were together when it was taken, but the time of that was not fixed (see Tr. 395, 396), while the other exhibits, the photographs, were taken between 3 P.M. and 4:25 P.M. (Tr. 398, 391). But the heroin was not delivered until after 5 P.M. (Tr. 124). So there is nothing in the record to justify the impression given by the statement in the brief that the heroin was there while appellant and Young were together or that they were present when the heroin was delivered.

All that the government has to link Owens and Young is that they both used the same outlet and were seen together once. It is as if a conspiracy between two thieves could be inferred because they used the same fence and were once seen together.

2. As to the admissibility of Exhibit 24-C against appellant, the government in its note on page 11 says that this was "clearly insignificant." Yet when appellant's counsel objected to the admission of this evidence (App. 16a, Tr. 406), the government attorney took the trouble to argue that appellant "was liable" for the acts of others (App. 18a, Tr. 408).

It should be remembered that this case was hotly contested, appellant testifying to his innocence in which

he was supported by another defendant. No one can now say that this evidence may not have tipped the scales.

Respectfully submitted,

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Attorney for Appellant

